



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 26, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-43

Frank M. Northam
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Northam:

This is in response to your letter of October 13, 1983, as supplemented by your letter of November 30, 1983, requesting an advisory opinion on behalf of the United States Defense Committee ("USDC") and Patrick Reilly, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposal to collect, and then distribute to the public, information relating to the positions of candidates for Federal office on several national defense and foreign policy issues that concern USDC.

According to your request, USDC is a non-profit, nonstock membership corporation and is exempt from Federal income taxation under Section 501(c)(4) of the Internal Revenue Code. You state that it is not associated with any political party, committee, or candidate, and that its purposes are to educate the public on defense and national security issues and to engage in legislative activity designed to promote a strong national defense and a strong foreign policy.

In furtherance of these purposes, USDC plans to collect information on the positions of candidates for public office by examining voting records of incumbents, public statements, and responses to USDC questionnaires. The questionnaires will be sent to all candidates for Federal offices, and will seek yes/no/no response answers to questions concerning the candidates' positions on issues of interest to USDC. To encourage candidates to respond to these questionnaires, USDC will contact members of the public believed to agree with its position on defense issues and will encourage them to urge the candidates to respond.

You state that USDC plans to compile and publish responses (or non-responses) to its questionnaires, and that publication will take the form of print media advertising, press releases, pamphlets and fliers, as well as mailings to the general public. You also state that such publications will contain information about USDC and its positions on national security and foreign policy issues. You add that publication of candidate responses will be done at some time before the primary or general election in which the candidates surveyed are running, may contain the candidates' party affiliations, and may indicate the percentage, number of times, or specific respects in which a candidate's responses comport with USDC's views. You note that the publications will use no words expressly advocating the election or defeat of any candidate.

In addition to publishing the results of its questionnaires, USDC intends to disseminate to the public information concerning the voting records of incumbent Federal officeholders on specific pieces of legislation of interest to USDC. You state that the dissemination of this information may occur at or around the date for elections, and that USDC may characterize certain votes or voting records as being in accord with or against the position of USDC. The incumbents' party affiliations may be given for identification purposes. You state that, as with the publication of questionnaire results, no words expressly advocating the election or defeat of any incumbent will be used.

Finally, you note that all of the proposed activities will be financed from USDC's general treasury, which is composed of both voluntary dues payments from members and contributions. In light of the facts presented in your request, you ask whether the Act and regulations prohibit expenditures from USDC's general treasury for the proposed programs.

Under 2 U.S.C. 441b, it is unlawful for any corporation whatever to make an expenditure in connection with a Federal election. Commission regulations, however, permit a corporation to distribute voter guides or other types of brochures describing candidates and their positions provided that the materials do not favor one candidate or political party over another and provided that the materials are obtained from a civic or other non-profit organization which does not endorse or support or is not affiliated with any candidate or political party. 11 CFR 114.4(c)(3)¹

With respect to that part of your request that concerns voter guides, it appears that most of the proposed materials, while designed to advocate issue positions, do not favor one candidate or political party over another. To the extent this is so, such activities would not be for the purpose of influencing a Federal election, and expenditures to support these activities would not be prohibited by 2 U.S.C. 441b. Some of the materials submitted with your request, however, seem to favor particular candidates by referring to "right" and "wrong" answers to survey questions and by asking USDC supporters to contact candidates in an impending election who answered "wrong" and to urge them to support the USDC position. Because favoring one candidate over another in the context of an election indicates an election-influencing purpose, inclusion of these

¹ A non-profit organization itself is permitted to distribute such voter guides without first finding a corporate sponsor. Cf. Advisory Opinion 1980-45 (a non-profit, non-partisan organization may conduct a voter registration drive by itself without a corporate sponsor).

and other similar references would take the materials outside the regulations at 11 CFR 114.4(c)(3).

With respect to USDC's proposal to compile and disseminate to the general public information concerning the voting records of incumbent Federal officeholders on specific legislation, the Commission notes that as a membership corporation, USDC is permitted to make partisan communications with its members.² Accordingly, any such information about voting records, even if for the purpose of influencing an election, may be communicated to USDC members. With respect to the general public, however, USDC may not distribute voting records for the purpose of influencing a Federal election. Some of the language in the draft letters suggests such a purpose. For example, Item IX of the attachments to your November 30 letter refers to a congressman's "weak voting record" and advises the recipient that an officeholder is "easier to convince . . . when he's looking for votes than . . . after he's safely in office." Because such language evinces an election-influencing purpose, the Commission concludes that expenditures for such activities are not permissible under 2 U.S.C. 441b.

The Commission notes that proposed amendments to 11 CFR 114.3 and 114.4 were submitted to Congress on October 27, 1983. These proposed rules may be prescribed in the near future. When prescribed, the proposed rules may apply to the activities described in your request. If you wish, you may request another advisory opinion on this matter after these proposed regulations are prescribed.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosure (AO 1980-45)

² The Commission expresses no opinion as to whether those whom USDC claims as "members" are in fact "members" under 11 CFR 114.1(e). See generally, Federal Election Commission v. National Right to Work Committee, 103 S.Ct. 552 (1982).